

1 Department of Labor and Industry
2 Board of Personnel Appeals
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8 STATE OF MONTANA
9 BEFORE THE BOARD OF PERSONNEL APPEALS

10
11 IN THE MATTER OF THE UNFAIR LABOR PRACTICE CHARGE NO. 27-2010

12	BRADFORD L. WILSON,)	
13)	
14	Complainant,)	
15	-vs-)	INVESTIGATIVE REPORT
16)	AND
17	PARK COUNTY AND INTERNATIONAL)	NOTICE OF INTENT TO DISMISS
18	BROTHERHOOD OF TEAMSTERS,)	
19	LOCAL NO. 2,)	
20	Defendants,)	
21			
22			

23
24 **I. Introduction**

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26 On February 11, 2010, Bradford Wilson filed an unfair labor practice charge with the
27 Board of Personnel Appeals against Park County, hereinafter the County. The charge
28 was also filed against the International Brotherhood of Teamsters, Local No. 2,
29 hereinafter Local 2, or Union. The complaint alleges that the County failed to bargain in
30 good faith with Local 2, a violation of 39-31-401(5) MCA and that Local 2 in turn failed to
31 bargain in good faith with the County, a violation of 39-31-402(2) MCA. Mr. Wilson
32 further alleges that the County and the Union both violated 39-31-305(1) and (2) MCA in
33 that they "were negligent in their duties to bargain in good faith", the end result of which
34 was a reduction in the gross hourly wage paid to Mr. Wilson.
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37 Park County, through both its County Attorney and its chosen bargaining representative,
38 as well as the Union through its Business Representative Jim Stone have responded to
39 the charge and have denied any violation of Montana law.
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41 On April 12, 2010, Mr. Wilson filed an amendment to the original charge restating the
42 original complaint and providing additional information and narrative as well.
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44

45 Park County responded to the amended complaint on April 28, 2010, again denying that
46 it had committed an unfair labor practice. Local 2 elected to not file a written answer to
47 the amended complaint, but in telephone conversation with the investigator Mr. Stone
48 denied that the Union had committed an unfair labor practice. Mr. Wilson was afforded
49 until May 7, 2010, to submit any further information or argument in support of his
50 position and he did so in a timely manner.

1
2 John Andrew was assigned by the Board to investigate the charge and amended
3 charge and has reviewed the information submitted by the parties and communicated
4 with them as necessary in the course of the investigation.
5

6 **II. Findings and Discussion**

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8 Mr. Wilson contends that the violation in question occurred during a July 2009
9 bargaining session between the County and Local 2. Prior to addressing the session
10 however, certain background information is necessary.
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13 Bradford Wilson began working as an operating engineer in the Park County Road and
14 Bridge Department on September 27, 2004. The Road and Bridge Department was not
15 unionized at the time Mr. Wilson was hired so Mr. Wilson was subject to the general
16 Park County Personnel Policy and Procedures Handbook which classified him as a
17 Grade 14 Operating Engineer. The handbook Mr. Wilson supplied along with his
18 complaint was effective 9/20/04 and, according to Mr. Wilson, was superseded 11/6/07.
19 The 04 version also lists a Road and Bridge Assistant Road Supervisor as a Grade 14
20 and a Road and Bridge Supervisor as Grade 16. No pay rates are assigned to the
21 grade levels listed in the handbook.
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23
24 On January 1, 2006, Mr. Wilson, in the words of his complaint "accepted a lateral
25 position to Assistant Road Supervisor Grade 14". The paperwork capturing this event –
26 an employee status change form - was submitted to, and approved by the county
27 commissioners with a retroactive date of January 21, 2006. As part of this change Mr.
28 Wilson's hourly wage was increased from \$14.57 to \$15.82, part of which was a
29 scheduled increase and part of which reflected Mr. Wilson's new title and
30 responsibilities. The status form actually reflects the change as "promoted to assistant
31 road supervisor". The salient fact is that Mr. Wilson saw an increase in his pay directly
32 attributable to his new title and responsibilities. There is no reason offered, nor can one
33 be discerned, as to why Mr. Wilson did not recognize the pay increase as attributable, at
34 least in part, to his new title and responsibilities.
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37 On February 3, 2008, Bradford Wilson wrote to his supervisor and the commissioners:
38

39 I am requesting that I be laterally transferred to Operating Engineer within the
40 Park County Road Department. I would like to take this time to thank each of
41 you for the opportunity to have served as the Assistant Road Supervisor. I feel
42 that I am much better suited to be in the field working and am a bigger asset to
43 the county as such.
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45
46 There was no decrease in Mr. Wilson's rate of pay as a result of this change in job title.
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48 In the spring of 2008, the County became aware of organizing efforts in the Road and
49 Bridge Department. That belief was verified when on June 10, 2008, Local 2 filed a
50 petition for a new unit determination with the Board of Personnel Appeals. The Board
conducted an election and on August 11, 2008, certified Local 2 as the exclusive

1 bargaining representative for employees in the Park County Road and Bridge
2 Department.
3

4 Bargaining ensued between the County and the Union with Jim Stone, Business
5 Representative for Local 2 as prime representative for the Union and Rick D'Hooge
6 being the designated representative of the County.
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9 As the parties sat down to discuss wages a spreadsheet was created by the County
10 showing the wages paid to employees in the Road and Bridge Department. This is a
11 natural occurrence in any bargaining process, and particularly so in this case where the
12 County and the exclusive representative of the employees are bargaining their initial
13 contract. Logically, you can't bargain wages until you know what everyone in the
14 bargaining unit is paid. It was during the course of this that the County discovered an
15 anomaly, namely that Mr. Wilson was receiving pay reflecting Assistant Road
16 Supervisor responsibilities, not Operator pay.
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18
19 Upon learning of the discrepancy Mr. D'Hooge broached the issue with the Union at a
20 July 14, 2009, bargaining session. Present at the table were Rick D'Hooge, Jim Stone,
21 Jill-Ann Oullette, County Human Resource Analyst, Ed Hillman, the Road and Bridge
22 Department Supervisor, and Mark Smith, Union Steward. Mr. D'Hooge advised the
23 Union that there was an issue with Mr. Wilson receiving Assistant Road Supervisor pay
24 when he was no longer in that position and had, in fact, resigned from those duties
25 (laterally transferred in Mr. Wilson's words) in February of 2008. Mr. D'Hooge further
26 advised the Union that the County did intend to correct the error in pay, but it did not
27 intend to do so retroactively. Mr. Stone advised the County that he would confer with
28 Mr. Wilson about the situation and then get back to the County.
29

30
31 On or about July 16, Jim Stone did talk by phone with Bradford Wilson. From that
32 conversation, and although the substance of it may be at issue between Mr. Stone and
33 Mr. Wilson, flowed agreement between the Union and the County that Mr. Wilson's
34 wage be decreased to reflect Operator's pay and not Assistant Supervisor pay. With
35 the consent of the exclusive bargaining agent the County initiated the necessary
36 paperwork and reduced Mr. Wilson's hourly rate from \$18.93 per hour to \$18.37 per
37 hour, the amount paid to similarly situated Operators. The County did not directly
38 advise Mr. Wilson of this change as the County believed that doing so could be
39 construed as bypassing the exclusive bargaining representative, an unfair labor
40 practice. Also, the County understandably believed that Mr. Wilson was already
41 notified, as he had been, that a reduction in pay was imminent. Ultimately when Mr.
42 Wilson received an August paycheck with the reduced rate he did file what he termed a
43 grievance with the County. Upon receiving no satisfaction through that route Mr. Wilson
44 then filed a wage complaint with the Montana Department of Labor and Industry on
45 December 17, 2009, the file on which this investigator has taken administrative notice.
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48 Mr. Wilson's wage claim recites his view of the factual background and contends in part:
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1 On July 16, 2009, I received a call at my residence from Jim Stone, Business
2 Representative for Teamsters Local #2, who is presently representing R&BD in
3 labor negotiations with Park County. Mr. Stone informed me that a wage
4 reduction of \$0.50 per hour might be forthcoming sometime in August. Mr. Stone
5 stated that the reduction was due to my lack of decision-making in the field. I
6 expressed concern to Mr. Stone about the legality of the reduction and the
7 ambiguity of the reason given.
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10 Then, consistent with his unfair labor practice complaint, Mr. Wilson proceeds to aver:

11
12 . . .the legal responsibility to notify the claimant [of a reduction in wages] belongs
13 to Park County and not Teamsters Local #2
14

15 Klein v. Department of Corrections, 185 P.3d 986 is cited as authority for this
16 proposition as is 39-31-306 MCA requiring that collective bargaining agreements be
17 reduced to writing, a contributing factor to the belief of Mr. Wilson that the provisions of
18 39-3-203 MCA were not followed by the Park County.
19

20 The above findings and contentions in mind, and with the further contention of Mr.
21 Wilson that the County and the Union bargained in bad faith with one another to his
22 detriment also in mind, the one thing crystal clear to the investigator is the fact that
23 neither the County nor the Union have accused one another of bad faith bargaining. In
24 fact, they believe that they met their mutual bargaining obligations to one another as
25 required under the Collective Bargaining Act for Public Employees, 39-31-101 et seq.
26 MCA.
27

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29 The bargaining between the County and the exclusive bargaining representative, Local
30 2 is just that, a bargain between the public employer and the union. Ultimately, any
31 contract that might be reached between the County and the Local 2 is also just that - an
32 agreement between the parties to the agreement – Local 2, the exclusive bargaining
33 representative and Park County. Arguendo, the unfair labor practice charge of Mr.
34 Wilson is incorrectly filed by an individual who does not have standing to question
35 whether or not the parties to the contract did or did not bargain in good faith with one
36 another. On its face the unfair labor practice complaint could be dismissed, but that
37 issue is not raised by the parties so the investigator will not recommend dismissal of this
38 solely on that basis alone. Rather, and because the County, through its chosen
39 bargaining representative has raised a question of possibly conflicting statutes, the
40 other elements of the complaint will be addressed in hopes of further carrying out the
41 purpose of the collective bargaining act, namely to “encourage the practice and
42 procedure of collective bargaining to arrive at friendly adjustment of all disputes
43 between public employers and their public employees”, 39-31-101 MCA. Further,
44 although not precisely stated, Mr. Wilson’s complaint could also be construed as raising
45 the issue of whether the Union fairly represented him in this matter.
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49 At the onset, had Mr. Wilson’s hourly rate been reduced in February 2008 to reflect his
50 resignation from the Assistant Road Supervisor position it is unlikely that this unfair
labor practice charge would have been filed, nor would the wage claim against the

1 County have been filed. It is only reasonable to conclude (and as actually happened)
2 that an increase in responsibilities from Operator to Assistant Road Supervisor resulted
3 in additional compensation for Mr. Wilson. So too, it is only reasonable to conclude that
4 a reduction in responsibilities, absent some clear, explicit agreement to the contrary,
5 would result in a decrease in pay for Mr. Wilson. It simply is not reasonable to define
6 what occurred as being "laterally transferred" as Mr. Wilson contends. Granted, both
7 job titles were in the same grade in the County handbook, but that does not mean the
8 same compensation applied to the two job titles. The proof of that rests in the simple
9 fact that Mr. Wilson's hourly rate increased when he became Assistant Road
10 Supervisor. Logical consistency says that his pay should have decreased when he
11 resigned/laterally transferred from the same position. That did not happen and
12 considering all that has been presented to the investigator what occurred is best
13 described as administrative error on the part of the County, perhaps attributable to
14 change in personnel and perhaps in some way attributable to some question on the part
15 of the County as to how best to fill a vacant Road Supervisor position. Mr. Wilson's
16 contentions and argument to the contrary, nothing presented to the investigator clearly
17 establishes a knowing and informed decision on the part of the County to maintain Mr.
18 Wilson's pay at the Assistant Road Supervisor rate. To the contrary, a more compelling
19 explanation is that maintenance of Mr. Wilson's pay at the higher rate was simply a
20 mistake. Whatever the case, the error in not addressing the resignation manifested
21 itself in a different form with the involvement of the Union. No longer could the County
22 unilaterally make a change in wages absent the involvement of the Union and the
23 County did what was legally required of it to implement the change in pay.
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27 The Montana Supreme Court has approved the practice of the Board of Personnel
28 Appeals in using Federal Court and National Labor Relations Board (NLRB) precedent
29 as guidelines in interpreting the Montana Collective Bargaining for Public Employees
30 Act, State ex rel. Board of Personnel Appeals vs. District Court, 183 Montana 223 598
31 P.2d 1117, 103 LRRM 2297; Teamsters Local No. 45 vs. State ex rel. Board of
32 Personnel Appeals, 185 Montana 272, 635 P.2d 185, 119 LRRM 2682; and AFSCME
33 Local No. 2390 vs. City of Billings, Montana 555 P.2d 507, 93 LRRM 2753. To the
34 extent cited in this decision, federal precedent is considered applicable.
35

36 It is well settled on the federal level that a unilateral change in a mandatory subject of
37 bargaining – wages, hours, fringe benefits and other conditions of employment - is an
38 unfair labor practice and a per se failure to bargain in good faith, NLRB v. Katz, 369
39 U.S. 736, 50 LRRM 2177, (1962). The rationale used in Katz has been adopted by the
40 Board of Personnel Appeals in numerous cases and has been most recently affirmed in
41 Bonner School District No. 14 vs. Bonner Education Association, 208 MT 9 (2008).
42 Absent impasse, unilateral changes cannot be made in mandatory subjects of
43 bargaining other than in very limited circumstances, none of which apply in the instant
44 case. Additionally, there is an ongoing obligation on the part of the employer to
45 maintain the status quo vis-à-vis mandatory subjects of bargaining not only during
46 bargaining, but also during the period of time when employees are engaged in other
47 protected, concerted activities, such as forming a union. Of further importance, direct
48 dealing with an individual member of a bargaining unit rather than with the exclusive
49 bargaining representative, either in the formative phases of the unit, or after recognition
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1 or Board certification, constitutes an unfair labor practice. See for instance, ULP 3-
2 2001, Firefighters Local No. 8 v City of Great Falls, General Electric Co. 150 NLRB 192,
3 *cert. denied* 397 U.S. 965, 73 LRRM 2600 (1970), and Medo Photo Supply Corp v
4 NLRB, 321 U.S. 678, 14 LRRM 581 (1944). In short, there were valid, legal reasons
5 why the County discussed the wage reduction issue with the Union before implementing
6 the change which was ultimately made with the consent of the Union. There were valid,
7 legal reasons why the County did not approach Mr. Wilson directly about the changes
8 once the Union was on the scene. There were valid, legal reasons why the County did
9 not discuss the changes directly with Mr. Wilson when the Union was on the scene, and
10 there were valid, legal reasons why the County stepped back and recognized the
11 actions taken by the Union in dealing with the bargaining unit member as appropriate
12 notice of the change in wages. Contrary to the assertion of Mr. Wilson, the County
13 followed legal obligations placed on public employers by applicable Montana law. The
14 County followed the law it deemed most applicable to the situation, and to the extent
15 there may be any conflict in 39-3-203, or for that matter whether Mr. Wilson even
16 properly asserted his rights under 39-3-203, the more specific bargaining obligations are
17 controlling in terms of the process that was used to implement the change in a
18 mandatory subject of bargaining.
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20
21 If error exists in this case it properly rests with the County for not correcting the change
22 in Mr. Wilson's pay and classification in February of 2008. Mr. Wilson, to some degree
23 arguably contributed to that error by not bringing the situation to the attention of the
24 County. This is not to say Mr. Wilson was in error, but to some degree the fact that he
25 returned to the field yet retained his pay must have struck somewhat of an odd note
26 absent some mutual agreement to the contrary, none of which has been demonstrated.
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28
29 Again there is serious doubt whether Mr. Wilson has standing to bring the charge he
30 has leveled against Local 2. However, in construing his charge in the broadest light, the
31 investigator believes that Local 2 has carried out its legal responsibilities to Mr. Wilson.
32 The delay in implementing the reduction in pay after Mr. Wilson's resignation from
33 Assistant Road Supervisor was no fault of the Union. Then when the Union was fully
34 engaged in concerted activities, including bargaining, the Union carried out its legal
35 responsibilities to Mr. Wilson. Whether or not Mr. Stone got, or for that matter was
36 given, the precise details of when the reduction would occur, job titles, promotion dates,
37 and the precise amount of the reduction has to give way to the fact that regardless of
38 Mr. Wilson's strained construction of being "laterally transferred" he was fully
39 compensated the wages due an Operator – his correct classification since February of
40 2008. Very arguably, the status quo Mr. Wilson now seeks to maintain, in fact, should
41 have been the status quo - Operators' pay - at the time he submitted his resignation
42 from Assistant Road Supervisor. To do otherwise not only perpetuates an error, but it
43 creates what could no doubt be perceived as pay inequities by other Operators in the
44 bargaining unit. Local 2 fulfilled its bargaining obligation to Mr. Wilson, the County and
45 for that matter, the bargaining unit as a whole.
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49 Park County and Local 2 lived up to their responsibilities to one another under the
50 collective bargaining statutes. Once an understanding was reached that the wage
reduction would occur, the question of whether or not there was an additional, or

1 continuing responsibility on the part of the employer, working in concert with the Union,
2 to notify Mr. Wilson of the specifics of that reduction and its effective date, is not a
3 matter for the Board of Personnel Appeals to decide. The responsibility of the Board is
4 to determine whether or not there is probable merit to the charge that the Union and/or
5 the County committed an unfair labor practice. In the view of the investigator there is
6 not substantial evidence to sustain a finding of probable merit that either the Union or
7 the County engaged in bad faith bargaining or that in the case of the Union, it did not
8 fulfill its responsibilities to Mr. Wilson. Could both the Union and the County have done
9 a more thorough job in notifying Mr. Wilson? Yes, but in what they did, there is no basis
10 for sustaining an unfair labor practice charge.
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13 **III. Recommended Order**

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16 It is hereby recommended that Unfair Labor Practice Charge 27-2010 be dismissed as
17 without probable merit.
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19

20 DATED this 20th day of May 2010.
21
22

23 BOARD OF PERSONNEL APPEALS
24

25
26
27 By: _____
28 John Andrew
29 Investigator
30
31

32 NOTICE

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34 Pursuant to 39-31-405 (2) MCA, if a finding of no probable merit is made by an agent of
35 the Board a Notice of Intent to Dismiss is to be issued. The Notice of Intent to Dismiss
36 may be appealed to the Board. The appeal must be in writing and must be made within
37 10 days of receipt of the Notice of Intent to Dismiss. The appeal is to be filed with the
38 Board at P.O. 201503, Helena, MT 59620-1503. If an appeal is not filed the decision to
39 dismiss becomes a final order of the Board.
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CERTIFICATE OF MAILING

I, _____, do hereby certify that a true and correct copy
of this document was mailed to the following on the _____ day of _____
2010, postage paid and addressed as follows:

BRADFORD WILSON
PO BOX 77
WILSALL MT 59086

BRETT LINNEWEBER
PARK COUNTY ATTORNEY
414 EAST CALLENDAR
LIVINGSTON MT 59047

JIM STONE
TEAMSTERS LOCAL NO. 2
PO BOX 2648
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